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File No. O.M. Practi /52

pIIE Legal Deptt.

A BRANCH

Subject:—Opinions under the Bombay Medical Practitioners Act, 1938

File No. O.M. Practi /52

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C O N T E N T S.

Legal Department File No. 0 Medical Practi / 52.

Sr.No.	N.I.O./No.	Subject.	Pages.
0.	[illegible].	Opinions under the Bombay Medical Practitioner Act, 1938.	
1.	310/11-2-52.	Whether under rule 80 of the Bom. Medical Practitioners Rules 1939 the Registrar is bound to cause to be printed and published the names of the enlisted practitioners that is, of the persons whose laws are entered in the list.	1
2.	2583/16-2-52.	Whether the view taken by the Surgeon General under rule 92 of the Bom.M.P.Rules 1939 is under--	3-5
3.	5137/5-4-52.	Bombay Medical Practitioners Act 1938 section 31A.	7-9
4.	5628/15-4-52.	Whether the L.A.G. and P.H.D's presumption that no notification is necessary under section 38(2) of the Bombay Medical Practitioners Act, 1938, for empowering Medical Officers of Health to lodge complaints for offences committed under the Act is correct.	11-15
5.	12964/6-8-52.	Prosecutions for inserting advertisements --B.M.P. Act 1938-Sections 16(3) 32 and 34.	17
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LEGAL DEPARTMENT.

Under section 27 of the Bombay Medical Practitioners Act, 1938 the Registrar has to print and publish a correct list of all practitioners whose names are entered in the register. The register referred to in this section is the register as defined in section 2(8) and maintained under section 15. It is quite distinct from the list which has to be maintained under section 18. There is no provision in the Act or in the rules for the publication of the list maintained under section 18. That section only provides that a list is to be maintained.

~~sent as reply.~~

Sd/ J.R.D.

Additional Secretary to Government.

U.R. to L.D.G. & P.H.D.No.310, dated the 11th January 1952.

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Office of the R.L.A.

It appears that Shri Martins applied in 1940 to the Register for registration under section 16(2) of the Bombay Medical Practitioners Act, 1938, on the strength of his practice for 10 years. By that time he had appeared for the L.P.A.C. test conducted by the Prabhuram Ayruvedic College, Bombay, but the Diploma was conferred on him after he applied for registration. Shri Matins now requests that this qualification may be entered against his name in the Register. The Executive Committee has passed a resolution for clarification of the position whether a qualification granted by a body not in the Schedule under the amended Act can be entered against the name of the recipient in the Register. The Surgeon General with the Government considers that though the qualification of 'L.P.A.C' of the Prabhuram Ayurvedic College, Bombay, possessed by Shri Martins is not in the schedule under the amended Bombay Medical Practitioners Act, it was recognized as a registrable qualification under section 16(2) of the Bombay Medical Practitioners' Act, 1938 at the time of first registration and since Shri Martins passed the 'L.P.A.C' examination before he was registered under section 16(2) the matter may be considered under rule 72 of the Bombay Medical Practitioners Rules, 1939. The R.L.A. is requested to advise whether Shri Martins' requested ~~to advise whether Shri Martins' request~~ can be granted.

2. Section 16(2) of the Bombay Medical Practitioner's Act, 1938, inter alia provides that the Register shall contain the names, residence and qualifications of every practitioner registered together with the date on which such qualification was acquired. Sub-section (3) provides that the Registrar shall keep the register correct as far as possible and may from time to time enter therein any material alteration in the address or qualifications of the practitioners. Sub-section (4) provides that the State Government may direct that any alteration in the entries ~~in~~respects additional qualification shall not be made unless on payment of such

fee as may be prescribed by rules. Rule 78 of the Bombay Medical Practitioners' Rules, 1939, provides that the Registrar shall enter in the Register on payment of fee of Rs.8/- in respect of each entry any additional qualification approved by the Faculty and obtained by a registered Ayurvedic or Unani Practitioner. Qualifications contemplated by this Rule as well as section 15(4) are qualifications which would entitle a practitioner to be registered under the Act. In the present case, Shri Matins was registered as a medical practitioner under section 16(2) on the strength of his practice for 19 years. No doubt, the qualification which he acquired later on by passing the 'L.P.A.C.' test conducted by the Prabhuram Ayurvedic College, would have entitled him for his registration and as such that qualification would have been entered in the Registar so long as that qualification was recognised as a proper qualification for registration under the Bombay Medical Practitioners' Act. But he did not apply in time, and by the time he did, the Bombay Medical Practitioners' Act, 1958, had been amended with the result that that qualification which he acquired by passing the 'L.P.A.C.' test was no longer a qualification prescribed under the Act. In these circumstances, it appears that the 'L.P.A.C.' qualification cannot be entered now in the Register even though Dr. Martins is prepared to pay the necessary fee.

Sd/ P. M. Lad.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No.2583 dated, 18th February 1952.

SKN.20/6/

R.I.No.6463 dated 1-4-52.

Submitted.

2. Under G.N.L.S.G. & P.H.D. No.6800/33, dated the 23rd August 1950, issued in exercise of the powers conferred by section 31A of the Bombay Medical Practitioners Act, 1938 Govt. has constituted a Registration Tribunal for the purpose of facilitating ~~xx~~ refugees and others mentioned in the section to have their names in the Register or list under the provisions of the Act. It appears a large number of applications for registration or entry in the list are pending before the Tribunal and with a view to expediting the disposal of these applications the L.S.G. & P.H.D. proposes to appoint another (additional) Tribunal under the Chairmanship of the present Chairman of the Tribunal The Remembrancer of Legal Affars is requested to advise whether the proposal would belegally feasible.

R.L.A. Sd/ P. M. Lad.

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Office of the R.L.A.

Bombay Medical Practitioners Act,1938.

Section 31-A-

It would not be legally feasible for Government to constitute under section 31A of the Bombay Medical Practitioners' Act,1938, more than one Registration Tribunal.

Sd/ [illegible] M. Lad.
Remembrancer of Legal Affairs.

U.O. to L.S.G. & U.D.D.No.6187, dated the 5th April 1958.

EMN.20/6/

L.D.,R.I.No.1647 dated 24.1.52.

The question for H,L.A's consideration is whether the L.S.G. ' P.H.Deptt's presumption that no notification is necessary under sect. 38(2) of the Bombay Medical Practitioners' Act, 1938, for empowering Medical Officers of Health to lodge complaints for offences committed under the Act, is correct.

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The presumption of the Local Self Govemment and Public Health Department is correct.

Sd/ .. N. Lad.

Remembrancer of Legal Affairs. •

U.O. to L.S.G. & P.H.D.No.5626, dated the 15th April 1952.

EKN.20/6/

Office of the R.L.A.

Prosecution for inserting advertisements.

Bombay Medical Practitioners' Act, 1938. Sections 16(3). 32 and 34.

Neither the Code of Medical Ethics adopted by the Board of Ayurvedic and Unani Tibbi Systems of Medicine, Bombay, nor the advertisements issued by DrAtalrai are included in these papers. In the absence of these papers, it is not possible to say whether any breach of any rules of Medical Ethics is committed by Dr.Atalrai by issuing the advertisements in question. Under the Bombay Medical Practitioners' Act, 1938, there is no provisions prohibiting advertisements on the part of a registered medical practitioner. Even in respect of persons registered under the Bombay Medical Act, 1912, such advertisements are not prohibited by the Act but by the Code of Medical Ethics adopted by the Bombay Medical Council and the punishment provided for the breach is not a prosecution but removal of the name from the Register. It may not be expedient to amend the Act with a view to provide for a prosecution for inserting such advertisements in newspapers. Such matters should ordinarily be left to be dealt with by the Board under the Code of Medical Ethics adopted by it. The Board, in its opinion is infamous in any professional respect, can after due inquiry take action under section 16(3) of the Bombay Medical Practitioners' Act, 1938. If after ~~his~~ name is removed from the Register in accordance with the provisions of section 16(3) he continues to practise, he can be prosecuted under sectio 34 read with section 32.

Sd/ P. M. Lad.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No.12964, dated the 6th August 1952.

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Office of the R.L.A.

It appears that the name of an Ayurvedic Practitioner, Vaidya Govind Khemraj Sharma, of Sabarmati, has been removed from the register of Board of Ayurvedic and Unani Tibbi Systems of Medicine, Bombay, under section 16(3) of the Bombay Medical Practitioners' Act, 1938, on the gound of unprofessional conduct. The Directorate of Publicity desires to issue a press note to that effect and the R.L.A. is requested to advise whether the publication of the news would in any way involve an action for libel.

"The publication of defamatory matter in a newspaper will be privileged where the matter published is of general public interest and it is the duty of the defendant to communicate it to the general public, [illegible] If the matter is matter of public interest, and the party who publishes it owes a duty to communicate it to the general public, the publication is privileged. Thus, where the General Medical Council published a book containing the minutes of the proceedings of the Council, including a statement that the name of the plaintiff had been removed from the register of medical practitioners on the ground that he had been guilty of grave professional mis-conduct, and a report of the proceedings before the Council in relation to the charge , it was held that, having regard to the character of the report, the interests of the public in theproceedings, and the duty of the Council towards the public, the publication of the report was privilieged." (see Akbutt v. General Council of Medical Education (1889) 23 Q.B.D.400

(C.A.) Gatley on Libel and Slander, p.281). It would, therefore, be clear that the publication of the report about the removal of the name of Vaidya Govind ~~xx~~ Khmraj Sharma from the register of the Board of Ayurvedic and Unani Tibbi Systems of Medicine on the ground of unprofessional conduct is in the public interest and it would be privile,ed. There would, therefore, be no legal objection to issue the press note if it be at the desire of the Board of Ayurvedic and Unani Tibbi Systems of Medicine. In the preamble of the press note it should be clearly stated that the press note is issued under the instructions of the Board of ~~Ayurvedic~~ Ayurvedic and Unani Tibbi Systems of Medicine.

Sd/ P. M. Lad.
Legislative Officer of Legal Affairs.

U.O. to Dir. of Publicity No.16552/A, dated
the 8th October 1982.

MKN.20/8/